to each lawyer on each objection, however repetitious, throughout the whole proceeding.

Mr. McCabe: You see, your Honor, you there again used the word "exact." We are not trying to ascertain the exact financial status. We are trying to fix upon the record the general classification. Now, the assessed valuation of a man's house I believe is in New York and other places a matter of public record. What we are interested in is knowing not whether he lives in a home assessed for $32,380, but whether it is in the class of a $10,000 home, a $60,000 home, or a $50,000 home.

The Court: He may be a mechanic, for all we know—

Mr. Sacher: He says he is a banker.

The Court: —but he does not look like one.

Mr. McCabe: But the record might show he did not look like a banker, your Honor, but I think he looks like a banker and talks like a banker.

The Court: Well, it is hard for me to distinguish the bankers in the subway, I will say that. But I have sustained the objection.

Now, if there is some legal argument that any of you want to present that is not just a repetition of what has already been said, I will listen to it,

—Ch. Tr. 1383—

but I honestly think that we have just about squeezed that question dry.

Mr. McCabe: Am I to assume from your Honor's indicating that you are going to cut off further questioning along these lines, that your Honor has concluded to his own satisfaction that Mr. Allen does fall within the class which we have described

as the rich, the propertied and the well to do?

The Court: I do not choose to answer that question, one of my reasons being that I think counsel has inadvertently dropped into the habit of catechizing the Court and asking questions of the Court which seem to me I don't want to over-encourage. I ruled on the objection, and I think what I have already said has been a sufficient indication of my disposition of the matter and my reasons.

Mr. McCabe: Now, your Honor, while I am on my feet, as they say over in Philadelphia, the records, our typewritten records will frequently show "Sit down, sit down, sit down" at regular intervals in the record where the Court is criticizing—

The Court: I have not told any of you lawyers to sit down.

Mr. McCabe: No. I say the records in Philadelphia will show that constantly; so if I inadvertently start to question a witness while I am on my feet,

—Ch. Tr. 1384—

I trust you will believe it is perhaps a nostalgic feeling that will make me feel so much at home, or that I am apt to fall into the bucolic ways of Philadelphia.

The Court: You have been doing pretty well. I particularly liked your quotation from Virgil the other day.

Mr. McCabe: Well, I did. I got the old books out again, but I won't burden the Court or the stenographer.

The Court: You were right about it. I was a little doubtful about the exact words. The metre did not quite seem to fit in. I thought maybe you had a word wrong. But, anyway, go ahead.

By Mr. McCabe:

Q. Mr. Allen, you stated you were a partner with Charles Allen, Jr.—

Mr. Gladstein: Your Honor, I had not finished my questioning.

Mr. McCabe: I will yield.

Mr. Isserman: If the Court please, I want to state an objection for the record, if I may.

I wish to object first to your Honor's ruling without hearing argument on the question of the objection which, in this case, was made by the witness.

The Court: I am hearing argument. What is this I have been listening to?

—Ch. Tr. 1385—

Mr. Isserman: If the Court please, I would like to state my position. I have not said a word to your Honor on this point.

The Court: All right.

Mr. Isserman: Secondly, I wish to call to your Honor's attention that if your Honor will rule on questions put by one counsel without giving other counsel a chance to state his position, then other counsel will ask the same question on behalf of his defendants and then argue his point.

Now, I object to your Honor ruling before defendants in this court are heard. And that is pre-

cisely what your Honor has done. And your Honor cannot take the position that an objection ruled upon by your Honor on a question put by one counsel is binding on other counsel unless other counsel are heard.

Now, I think your Honor's ruling was made hastily; I think there is important argument to be had on it, and if your Honor is willing to hear me now I will go into it, and, if not, I will do it when it comes my turn to question.

—Ch. Tr. 1386—

The Court: You may argue now in extenso.

Mr. Isserman: I ask first before I argue that your Honor withdraw your ruling.

The Court: The motion is denied.

Mr. Isserman: I take exception to that.

Now, if the Court please, this questioning and other questions like that are designed not merely to bring out the occupational status of the witness, which, from your Honor's remark, seems to be the basis of your Honor's ruling. The purpose of this and similar questions to be asked of this witness, and which I would put to this witness, or my colleagues would put and I would adopt, would be to establish the economic status of the witness to indicate that the inclusions improperly made in the selection and establishment of the jury list in the Southern District of New York are inclusions which are deliberately and systematically selected from those persons in a community of wealth and property, of extreme wealth and property, of an economic status which is different from the economic

status of manual workers and other residents of the community, and that an excessive number have been deliberately and systematically—an excessive number of that class have been deliberately and systematically selected for inclusion on the juries.

—Ch. Tr. 1387—

Now, without being able to obtain from this witness evidence as to his economic standing, which is the best evidence of that standing, your Honor is ruling in effect that it is improper in this court to establish the economic status of a person called for jury service. And we say if you do not allow us to establish that economic status you are denying us due process of law, in that you are not allowing us to show that the jury list established in this court from which grand and petit jurors are drawn, are not truly representative of a cross-section of the community. In making that determination it is necessary to place before the Court the economic status of the witness.

Now, the Court has said something about the question of not getting the exact financial status. The Court seemed to be satisfied by the fact that the witness owned a home in Riverdale or Fieldston, that that indicated for the Court's satisfaction his economic status. It does not indicate that status to the extent that the defendants have to establish it under the law.

Now, we are perfectly willing to work out a range either of income or property ownings, establish a system of brackets under the supervision of this Court which would not lead to an individual detail-

—Ch. Tr. 1388—

ing of the money that a man has in a bank or a safe deposit vault or invested in his business or in his home, so that the economic status can be established by reference to a range. If that can be worked out by stipulation with Mr. McGohey we are willing to do it, or, at least, on behalf of my clients I am willing to do it; but if this Court will not allow a determination of economic status from the source which is the best evidence; then your Honor is denying us our rights in this proceeding without due process of law.

Mr. Sacher: May I make one observation, your Honor?

The Court: You may argue in extenso.

Mr. Sacher: Well, it is not a question of arguing in extenso. I think what is being discussed here now will really determine the extent to which the inquiry will be conducted.

I heard your Honor say a few minutes ago that the witness did not look like a banker.

The Court: No, I said he did not look like a mechanic.

Mr. Sacher: Oh, I beg your pardon. All right.

Now, the point I want to get at is this, that what the decisions of the Supreme Court are concerned with are not the appearances, for I have seen many

—Ch. Tr. 1389—

workers and mechanics who look a darn sight more handsome and more personable and pleasant than a lot of fat bankers.

The Court: Well, we won't go into the question of how good-looking everybody is. We might not come out so well on that.

Mr. Sacher: That may be. But I am not interested in that now. I want to stick to the facts of the case and the law of the case; and what I am saying to your Honor is the following, that the Supreme Court of the United States in the Ballard case and particularly in the Glasser case said in so many words that the grand and petit juries of our country may not be made the organs of special economic, social, etc., classes.

We have announced that our purpose here is to establish beyond all reasonable doubt that these grand and petit juries in this district are organs of certain economic, social classes. We are concerned with demonstrating that this witness falls within a certain economic class. If you bar questions which are concerned with demonstrating the category of class into which he falls, then I say to your Honor that what is happening here is that the foundation for the establishment of the challenge will have been removed. And I therefore would respectfully urge upon your Honor that what we do here is to allow the question to proceed, because,

—Ch. Tr. 1390—

after all is said and done, the inquiry as to what the man owns, as to what he has, as to what his income is, as to what the value of his house is, as to what he earns per week or what he reaps in profits and dividends and unearned increment, so to speak—all that has probative value in establish-

ing his economic status. And I therefore submit that since that is the best evidence—

The Court: That is just what you are not going to do, however.

Mr. Sacher: What is that, your Honor?

The Court: That is just what you are not going to do, however.

Mr. Sacher: Well, let me make one thing clear: your Honor said that you were going to conduct a hearing, and I tell you now if what you are going to do is to prevent us from asking these questions and proving the fact, then this hearing is no hearing; it is just a sham and a pretense designed to prevent the establishment of those facts which will prove that the system is precisely what we say it is.

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New York, January 26, 1949

—Ch. Tr. 1522—

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Mr. Crockett: The telegram is as follows:

"On my behalf please read following telegram sent to Judge Medina into record: 'Re: US v. Foster. Actively engaged tomorrow (Wednesday)

—Ch. Tr. 1523—

morning'"—

This telegram by the way is dated January 26 at 12.49 a. m.—

"Actively engaged tomorrow (Wednesday) morning (11.30 a. m.) in US Court of Appeals District Columbia Circuit Case #9813 for respondent whom I have represented in said case for over 18 months, long trial and many issues on appeal. Herewith renew request for one day adjournment originally made by phone Jan. 24th after notice from Washington counsel when you denied appointment for discussion in presence of US Attorney. Deplore"—

The word here is spelled "D-e-p-e-t"—

"Deplore absence but conceive duty to client requires presence in Appeals Court. Case was previously scheduled Jan. 17, but adjourned at my request because of this trial. Call attention to Court's statement at close of Friday session that Court will defer to attorneys' engagements in appeals cases of long standing.' Abraham J. Isserman, Attorney for Gilbert Green and John Williamson."

In that connection I should like to remind the Court that your Honor stated the other day that it was not only expected that a District Court would give way

—Ch. Tr. 1524—

to a Circuit Court but that it was more or less required that that be done. I do not purport to be quoting your Honor directly, but that is the sense of what the record indicates. I understand from Mr. Isserman that he did contact your Honor's office, more or less just as your Honor has indicated, and requested that he be given an adjournment of just one

day in this matter. I know as a fact that he did talk with the clerk of the Circuit Court of Appeals in Washington and had his case down there postponed from January 17th so as not to conflict with his activities in this case. Under the circumstances I would like to suggest—I do not offer it as a motion—but I certainly do suggest to the Court the propriety of adjourning this proceeding until tomorrow morning, at which time Mr. Isserman will be back.

The Court: Do you really think any prejudice will come to Mr. Green and Mr. Williamson by proceeding today, with so many of you counsel here to carry on—

Mr. Crockett: Your Honor has just made one ruling which I think most certainly will prejudice those defendants in the absence of their counsel, and that was your Honor's ruling in effect directing the method by which we shall proceed to try this chal-

—Ch. Tr. 1525—

lenge. I certainly do expect to be heard on that, and I am sure that if Mr. Isserman was here he would want to be heard on it. It goes to the fundamentals of this whole case.

The Court: I think we can profitably spend the rest of the day listening to the arguments that the rest of you lawyers have to make on the matter that I have, as you say, indicated what I would rule. And then Mr. Isserman, when he gets back tomorrow, will let us have his views, and I shall make no ruling in the matter until I have heard what he has to say. You know what I am contemplating. You each will doubtless desire to argue at some length about it.

You also each of you desire to argue at length on the matter of a motion to disqualify me and the other judges, so that we can spend today listening to your arguments, which surely cannot prejudice the two defendants whom Mr. Isserman represents, and then tomorrow we will hear what he has to say.

Mr. Crockett: My suggestion, your Honor, has to do with even the propriety of continuing in this proceeding with two defendants who are not represented here by counsel. I could cite to the Court some cases in support of the position I take, but I do not believe it is necessary. So far as the argument is concerned, I think the Court is aware that my arguments are usually pretty short and to the point, though I must

—Ch. Tr. 1526—

confess they have not been any too convincing to your Honor—

The Court: Yes, much better than Mr. Sacher and Mr. Isserman who have been—well, shall I say, prolix and vociferous and repetitious, but all in good taste, and I have listened, although I must say, as I said a few moments ago, that the thought has finally entered my mind that all this business that has been going on is just a series of wilful and deliberate maneuvers for delay.

Mr. Sacher: I resent that and I want to deny it once again. I want to say that the Court's assertions, unfounded in evidence, are entitled to no more weight than lawyers' statements are, and I want to deny as unequivocally as I know how this statement, and I want to say, your Honor, that we want no more talk or argument this morning. Let us have the witnesses.

We want to call them, dispose of them, call one right after the other, as expeditiously as possible.

The Court: Now, let me see if I understand that. You say let us go ahead, call the witnesses at once.

Mr. Crockett says no, we must not go further because Mr. Isserman is away. Mr. Isserman's two clients say "We protest and desire to have no further proceedings in the absence of our counsel."

Mr. Sacher: If you will give us a little time I think

—Ch. Tr. 1527—

we can straighten that out and come to your Honor with a unified decision on the matter.

The Court: Now you are talking. If you can in the course of a short recess get yourselves organized here, which I think is a very sensible thing to do, talking with the clients of Mr. Isserman, perhaps we can go ahead, so I will take a ten-minute recess.

Mr. Sacher: Thank you.

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—Ch. Tr. 1777—

New York, January 27, 1949

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The Court: Would you care to indicate to me the course of the proof that you expect to make?

Mr. Gladstein: I would prefer not to state that as of record at the moment. But I am rather sure the evidence will be regarded by the Court as material and quite important.

The Court: I made an observation yesterday that I desire to repeat for your information. You may

remember that back before the trial started when we had some motion being argued up in the admiralty term, I heard a number of lawyers for the defendants excoriating an article in the World Telegram, I think, which had predicted some sort of antics for delay, and you were all very vociferous in protesting that that was a horrible accusation and that nothing of that kind would possibly happen. And I made a statement on the record that up to that time I had seen nothing done by any of the lawyers that I thought could warrant any such characterization.

Now, after a week and a half or so of this proceeding here, and during your absence I read over the record rather carefully and the thought did enter my mind that there was a deliberate, wilful and con-

—Ch. Tr. 1778—

certed effort being made by counsel for the defendants to delay the case by various expedients. I also said that I was extremely reluctant to think that any lawyer would do such a thing and that I would, and I did, put the thought out of my mind.

I mention it now so that you all may know that the thought has occurred to me. I should not want to later have some question come up and have any misunderstanding.

And so we will adjourn now until tomorrow morning at 10.30.

Mr. Gladstein: Before your Honor adjourns may I say just one thing, your Honor. I haven't read the transcript, but I don't have to read the transcript to be able to say to your Honor in all sincerity and

honestly that, speaking for myself and for those of the attorneys in the case, whom I have come to know and with whom I have talked, never at any time has there been any suggestion express or implied on the part of any of us to use any tactics or maneuver whatsoever for delay. To the contrary, your Honor, the challenge to the jury system here was filed not for the purpose of delaying the holding of a trial but in the fullest faith and confidence that an im-

—Ch. Tr. 1779—

partial consideration of what we had to offer would definitely result in the outlawing of the jury system here and in the quashing of the indictment. Because we feel satisfied, confident, that that kind of appreciation of our evidence can result in no other thing than the quashing of those indictments. Lawyers who present that serious a case do not do so, your Honor, for the purpose of delay but because they believe the evidence shows that they are right. And in so far as it may have seemed to the Court at the time—

—Ch. Tr. 1780—

The Court: Well, so many things have happened that seem, as I read back over the record, hardly consistent with anything other than a concerted and deliberate and wilful effort to delay. But I have told you that the thought merely occurred to me and I have put it out of my mind for the present. I wouldn't want to have something come along later and have anyone fail to understand that there is this interpretation of what has been going on. I do not say it is the right interpretation; it may well not be.

And all I do say is that the thought for the first time came into my mind and I put it out.

So we will adjourn now until tomorrow morning at 10.30.

Mr. Sacher: I want to state on the record, however, that I deny what your Honor said.

The Court: You don't need to shout, Mr. Sacher.

Mr. Sacher: No. I resent—

The Court: It is possible to address the Court occasionally without shouting.

Mr. Sacher: Yes. Your Honor in a quiet manner is picking out a point which will result in certain headlines tomorrow morning. For the record I want to make it clear that I have done nothing and will never do anything to delay or hinder the progress

—Ch. Tr. 1781—

of this case. And whatever I or any other counsel in this case have done or has done has been directed solely to the achievement of the end of proving that this jury system is bad.

And I think, your Honor, that there is no justification for closing every day's session with the observation as to what thought was entering your Honor's mind concerning our state of mind.

Mr. Crockett: If the Court please, may I be heard?

The Court: Yes.

Mr. Crockett: It so happens that I also read the record during the brief holiday period that we had, and with all due respect to your Honor I notice that there was more comment on the part of the Court than there was for example on the part of the United

States Attorney, and more comment than there was on my part.

I have given quite a bit of thought to all of these continued references to delay, delay, delay, and I must repeat what I said this morning: that we have spent the better part of this day arguing about something that might very well have been taken care of by letting those jurors take the stand and complete their examination. By that time Mr. Gladstein would have been back and we could have gone right on

—Ch. Tr. 1782—

with the other character of proof that your Honor seems to desire that we start with in the morning. That is all I have to say, except we deny—

The Court: What did you say about what I desired?

Mr. Crockett: I understand that your Honor desires a different type of proof tomorrow morning.

The Court: Not only desire—

Mr. Crockett: You say you don't want any more jurors—

The Court: (Continuing) I have ruled that I will not hear any more of the petit jurors. And so, whether you desire or not, you will proceed with the other phases of your proof or you will rest and take the consequences.

Mr. Crockett: I can assure your Honor, speaking for myself, that I have no intention whatever to rest at this point. And I do not intend to rest until I have sufficiently established the systematic exclu-

sion of Negroes, even if I have to call every qualified Negro in Harlem down here and make an offer of proof on his part.

The Court: Well, that will take some little time.

Mr. Crockett: I agree, your Honor.

—Ch. Tr. 1783—

The Court: Do you propose to do that?

Mr. Crockett: I said, if necessary to prove my case I would do that.

The Court: You know, on numerous occasions I have asked counsel for some indication of the proof they expect to offer, which is a common question in litigation, and one of the things that has impressed me has been the persistent refusal of counsel to inform the Court as to what they expected to offer or to show. It was a small thing in its way, but it hasn't made a favorable impression upon me. However, you may come to that in due course.

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—Ch. Tr. 2420—

New York, February 3, 1949

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The Court: I have already indicated several times that whenever I make a ruling adverse to any of the defendants or their counsel each of the defendants is deemed to have excepted thereto, and to get the benefit of the exception, unless some counsel desires to rise and say that he does not desire the benefit of the exception.

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—Ch. Tr. 2469—

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Mr. McGohey: Mr. Wilkerson, will you please keep your voice up a little?

The Court: I can't hear him and I am sitting right alongside of him, he whispers so much.

Mr. Gladstein: I heard him, Judge, and I am a good deal further away from Mr. Wilkerson than you are, and my hearing isn't as sharp as it used to be.

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—Ch. Tr. 2494—

Mr. Sacher: I repeat, this is an Alice in Wonderland procedure. We always get the sentence first and then the trial. Now, if we would just get back to ordinary procedure with trial first and sentence afterwards, this might be a little bit more real—

The Court: I scarcely think that that sort of language comports with the dignity of a lawyer addressing the Court—

Mr. Sacher: I did not mean any disrespect, your Honor.

The Court: —except perhaps in jest.

Mr. Sacher: You hear one of us, you rule, and then it becomes necessary to apply to your Honor constantly for reconsideration, and for once we would like to ask for consideration instead of reconsideration, and I am trying to argue something now—

The Court: You will completely refrain from further argument along this line.

Mr. Sacher: Then may I address myself to the merits of the argument on this question? What I

—Ch. Tr. 2495—

wish to say is the following: that the table which we presented as part of our challenge indicates that there is a correspondence between the size of the Republican vote in each Congressional District and the number of jurors called from that district for service. And I have illustrated, for instance, in the case of the 17th where the Republican vote is 53.2 per cent—

The Court: If you are determined to do what I have just told you not to do—

Mr. Sacher: I didn't understand you. Is that what you asked me to refrain from?

The Court: I asked you to refrain from, under the guise of argument, putting in the very figures I have ruled out in questions to the witness—

Mr. Sacher: After all, there is no jury here, your Honor.

The Court: Now, if you insist, you must, of course, take whatever the consequences are.

Mr. Sacher: Your Honor, may I say this: I have no objection to taking consequences if the occasion is one which justifies the taking of consequences. Now, if all your Honor says is you don't want me to read from a certain document, I hardly think that that is important enough to justify the consequences. I don't think the liberty of my clients is involved in this specific thing.

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New York, February 4, 1949

—Ch. Tr. 2541—

Q. Have you in the course of your legislative experience been concerned with the problem of housing in your district? A. I have.

Q. And how did that concern manifest itself?

Mr. McGohey: I object to this line of questioning—

The Court: Sustained.

Mr. McGohey: —as irrelevant.

Mr. Isserman: Will your Honor hear me on it?

The Court: No.

Mr. Isserman: I would like to offer to prove that if this witness would be allowed to answer he would answer that he was concerned with a study of housing—

The Court: Now, Mr. Isserman, instead of following the customary procedure, where an attorney asks a question the relevancy of which appears on its face or the irrelevancy appears on its face, the Court rules and there is an end to it—in this trial

—Ch. Tr. 2542—

counsel, that is to say you and your colleagues, have developed this new business of proceeding to then make an offer of proof in which you state on the record the answer that you expect to get. And I am not going to permit that. This is just a preliminary question of little significance.

Mr. Isserman: Well, it is—

The Court: And I have ruled against it. I will hear no argument. I will hear no offer of proof as to this question.

Mr. Isserman: Will your Honor hear the cases bearing on offers of proof which indicate that this is appropriate under the circumstances?

The Court: No. I think I am pretty familiar with the elementary principles having to do with such matters. You are just qualifying the witness now for something, and I do not regard that particular inquiry as of any moment. So you go right ahead with the next question.

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—Ch. Tr. 2544—

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Q. Now can you tell us how long these houses and projects have been in existence?

Mr. McGohey: Objection, your Honor.

The Court: I don't quite get the point of that. If there is some point to it I might allow the question.

Mr. Isserman: The point is, we want to show the existence of these houses during the period when jurors were drawn and the composition of the persons in those houses.

The Court: And I suppose that, in turn, will lead to our dragging through all the different changes in construction in the district from 1940 to date.

I think I will sustain the objection.

Mr. Isserman: Will your Honor hear me on it?

The Court: No.

Mr. Isserman: Well, I would like to object to your Honor's characterization of the testimony by the use of your Honor of the expression "dragging through." We are trying to present evidence here, and I would like to argue my right to ask this question and to put on record what I intend to prove by it.

The Court: Yes, that is what I ruled you may not do.

Mr. Sacher: Your Honor, it seems to me that the

—Ch. Tr. 2545—

interrogation as to the witness's qualification is necessary not only to qualify him but to establish the weight that is to be attached to his testimony, and it seems to me that Mr. Isserman's inquiries are directed not only to qualifying the witness but to show an extent of familiarity which will give the weight which ought to be attached to that testimony.

Mr. Isserman: And I might say, your Honor, much more than that, we intend to show that these two particular housing projects here—

The Court: Mr. Isserman, you may not recall but I have ruled that you may not state anything further as to this line of proof. You will proceed. You have your exception, and you may go on to some other subject.

Mr. Isserman: Do I understand that I may not ask one question about the housing projects to which the witness has referred?

The Court: That is right.

Mr. Isserman: And that your Honor will hear no other proof in respect to that?

The Court: Well, I may later on after we have more evidence. That is something I will decide then.

Mr. Isserman: I will make an offer of proof, then, if the Court please, as to these two housing pro-

—Ch. Tr. 2546—

jects to the effect that if the witness were allowed to answer this question and the following questions which would be put concerning these houses, that these houses contained approximately—

The Court: Mr. Isserman, you are doing just what I told you not to do. Now that has happened so persistently here in this trial that it has made a very definite impression on me. You may remember that some time ago I had occasion to remark that I felt that there had come into my mind for the first time a thought that a wilful, persistent and deliberate attempt was being made for delay. I can find no other explanation for the way counsel have been conducting themselves in dragging this matter out; and in paying no attention to my rulings, no matter how trivial and inconsequential the particular matter may be. Now I hope you will bear in mind that matter because I may be literally forced to take some sort of action here merely to protect the administration of justice from frustration. And so I hope you will now proceed to some other subject.

Mr. Isserman: I object to your Honor's characterization of the conduct of counsel; to the statement that this is an effort to drag this matter out; to the statement that this is a persistent effort at delay,

and state for the record that it is a persistent effort

—Ch. Tr. 2547—

to put the facts in evidence and to protect the rights of my clients to the point at which I am certain that the Court has ruled that I may not proceed further. It was not clear from the Court's rulings, particularly the Court's statement that the Court would come to an offer of proof later, when I asked if the Court was precluding offer of proof, and the Court did not state that it was, that I continued to make it. I am now convinced that this Court will not allow me to make an offer of proof on this subject, and I will therefore desist.

Mr. Gladstein: Your Honor, may I say something about offers to prove?

The Court: You may not.

Mr. Gladstein: But, your Honor, I would like to suggest some cases to your Honor that you ought to look at—

The Court: Well, I have had that suggestion addressed to me a little while ago and I have rejected it. Now I think perhaps you gentlemen would do well to let the matter rest as it is now and proceed with the interrogation of the witness so that we may get some testimony relevant to the issue that is before me.

Mr. Gladstein: If the Court please, there are cases and cases which show that unless counsel makes an

—Ch. Tr. 2548—

offer of proof—and the offer is not required to be in writing—

The Court: Mr. Gladstein, did you understand that I indicated that I did not desire to hear any further argument on the point?

Mr. Gladstein: All right. I understand, your Honor, except that I wanted to call your Honor's attention to a specific authority—

The Court: Yes, and that is what Mr. Sacher wanted to do just a little while ago.

Mr. Gladstein: This was on another matter entirely. We are now talking about offers to prove.

The Court: I am not disposed to hear any argument or hear any suggestions at this time, and I direct that Mr. Isserman proceed to interrogate the witness on some subject other than this low cost housing to which he has been addressing certain questions.

Mr. Gladstein: My only suggestion then, is this: since your Honor won't permit me to refer to the authorities, then I refer to a practical suggestion, and that is if instead of consuming time in arguing as to whether or not we have the right to make the simple statement for the record as to what the witness would say if he were permitted to answer the

—Ch. Tr. 2549—

question to which the United States Attorney has objected, and which objection has been sustained—if instead of doing that we were simply allowed to follow the normal, usual routine procedure that takes place even before juries. Many a time a question is asked—

The Court: You see, Mr. Gladstein, I am the one who has to decide about procedure here; and I hear

from time to time from you and your colleagues how wrong I am and how little I know of procedure, and perhaps you are right; but the common method is for counsel to state his position, the Court rules, and then go on. If there is error then it may be corrected.

Mr. Gladstein: Yes—

The Court: So you will please desist from further argument.

Mr. Sacher: Does your Honor—

The Court: Now Mr. Sacher, I do not desire to hear you now, so—

Mr. Sacher: No. I am not going—

The Court: —so please—

Mr. Sacher: But you have characterized my conduct as well as that of trial counsel, and I wish to deny it on the record, and I wish to say that your Honor is aware of the fact that there are 40 or 50 newspapers here, and on the threshold of Congress-

—Ch. Tr. 2550—

man Marcantonio's testimony you have taken occasion to say that his testimony is being introduced for the purpose of dragging and delaying the trial; and I say—

The Court: Did I say that?

Mr. Sacher: Well, you imply that very broadly. If your Honor wishes to deny it I shall be glad to have the denial. But I got the impression very distinctly that your Honor's observation was made just on the threshold of the Congressman's testimony and that it was designed to color the effect and impression to be given to it, and I do not believe, your Honor, that that is appropriate.

The Court: If you are only trying to provoke me, Mr. Sacher, you are wasting your time.

Mr. Sacher: I am not. I am provoked because you characterized our conduct and I am simply rising to reply to it. I did not characterize your Honor's conduct. You have characterized ours.

The Court: That is what the Court is supposed to do—

Mr. Sacher: I don't think so.

The Court: —when there is occasion for it. Now, you vigorously deny it. No counsel who I have ever known to misbehave himself says that he admits that he is misbehaving. Naturally, the more you have in

—Ch. Tr. 2551—

stalling and delaying tactics the more vigorously the man proceeds to deny it and uses up more time. I don't expect anybody who does something of that character to admit it, but I think mine is the function of making the decision.

Mr. Sacher: Well, ours is not the function to stand here and be accused by your Honor. I submit that that is not according us a fair trial when throughout these proceedings you persist in characterizing testimony whose materiality and relevancy you have not yet ascertained—you proceed to characterize it on its threshold as constituting stalling and delaying; and I submit, your Honor, that the proprieties would require that the Court exercise the same restraint that counsel is asked to exercise.

The Court: Well, you see, you and your colleagues have apparently adopted a new technique in criminal cases by which instead of the defendants who are

indicted being tried, the Court and all the members of the court are the ones who must suffer the excoriations and accusations of counsel. But I think, perhaps, with patience there will be an end. So you will please let the matter drop there, and Mr. Isserman will proceed with his questions.

Mr. Isserman: I will proceed, your Honor, but I

—Ch. Tr. 2552—

am again constrained on behalf of my clients to object to your Honor's remark characterizing the questioning which I am indulging in, or suggesting that the questioning is a stalling and delaying tactics, and to the description of this challenge to a jury, which under the law we have a right to make on behalf of our clients, as a new technique—

The Court: You have been at it three weeks now. I think possibly if you go on arguing this way we will be here the rest of the year on this challenge. But I think I shall take some steps to prevent that.

Mr. Isserman: I would like to complete my objection to the characterization of the jury challenge as a new technique, and your Honor's last statement that your Honor will take steps to prevent what is merely our effort to put in evidence the facts, and the fact that it takes three weeks or ten, your Honor, makes no difference in the administration of justice.

The Court: Well, perhaps we had better let each one of the counsel for the defendants say a word or two now, because they look as though they desire to state their positions too.

Mr. McCabe, would you like to say something?

Mr. McCabe: I had not intended to say anything,

your Honor, but as long as your Honor invites it I

—Ch. Tr. 2553—

would like to express a thought that has been going through my mind for several days: your Honor will recall that your Honor criticized me several times and criticized fellow counsel for referring to the jury system in the Southern District of New York in terms containing many adjectives, such as corrupt, illegal and unfair.

The Court: Did I criticize you for that?

Mr. McCabe: I think you did, and I think your Honor said "You will please observe that merely by your calling it corrupt or illegal or unfair that does not make it so."

The Court: Yes, and I heard so much repetition of that that I got the impression that it was being made for consumption out of the court instead of in the court, and that perhaps some of you thought that this idea of repeating accusations of that character, however extravagant, might have some effect elsewhere; but I do not remember criticising you for making the charge that you have made here. You have a right to do that, and that is what we are trying out.

Mr. McCabe: You see, your Honor, since that was so far from our minds I wondered how that came to your Honor's mind, and now it has become—

The Court: It might be prejudice, I suppose?

—Ch. Tr. 2554—

Mr. McCabe: No, it has become clear to me that your Honor is doing the very same thing. Your

Honor by constantly referring to our tactics as delaying tactics; by referring to evidence which seems to me to be very clear and precise, as being confusing, and referring to gaps in the testimony—I think that your Honor seems to have in his mind doing the very thing which you, I think unjustly, indicated that we might be doing. It seems to me that your Honor's words, that constant repetition of our new techniques and delaying tactics, and dragging things out and rambling on, that that is addressed—

The Court: Well, maybe I do ramble a little now and then, but I think that may be the privilege of the Court.

Mr. McCabe: Yes, but I say that it seems to me that that is what is in your Honor's mind, and that also may very well be addressed to someone outside of this courtroom, and I think that the record, if reviewed by some other authority may indicate unusual degree of tolerance in the face of particularly annoying tactics, which I don't think we are guilty of.

. . . . .

—Ch. Tr. 2620—

Mr. Isserman: If the Court please, I would like to respectfully object to your Honor's remarks in characterizing the effort we are making here and in indicating that the general proof will not be accepted while at the same time the specific proof which is available is also not received. I was beginning to point out to the Court—

The Court: Well, I thought, Mr. Isserman, that when you came to have the Congressman testify to the general complexion of his district that that was all right. Now when you come down to his study of literacy or the intelligence of such a large number of people, I regard it as of no value.

Mr. Isserman: But he knows those people, your Honor.

The Court: That is what you say.

Mr. Isserman: That is what he says.

The Court: That is what he says.

Mr. Isserman: And that is the fact.

The Court: And I must draw conclusions when a man says that he knows—what is it?—104,000 voters and 297,000 people in there; I must draw my own conclusions. And from my own rationalization of it I have excluded his statement, or the questions that are seeking to elicit his statements about his knowledge of the intelligence and of the literacy of

—Ch. Tr. 2621—

such a large number of people.

Now you take your exception and you are protected. If I am wrong, why, that is something that—

Mr. Isserman: I was in the middle—

The Court: —that you can have corrected.

Mr. Isserman: I was in the middle of my objection when your Honor interrupted to misconstrue a statement that I made. I said, conditionally—

The Court: I wish you would not say that I do that, to misconstrue.

Mr. Isserman: It seems to me to have been misconstrued.

The Court: That seems an impertinent thing. Mr. Isserman, that seems an impertinent thing. You are an experienced lawyer and you know better than to do that.

Now, you lawyers have been at that here for three weeks, perhaps to provoke me—I don't know what the reason may be. But I do know that if you keep it up some day, perhaps now, perhaps hereafter there will be a time of reckoning. Now, please don't do that.

Mr. Isserman: And I would like now to object to your Honor's characterization of my comment.

Now, the statement that I was making—

The Court: Well, when you charge me with deliberately misconstruing something I regard that as impertinence.

—Ch. Tr. 2622—

Mr. Isserman: I did not say it was deliberate, your Honor. But I said it seemed to me to be that. But, in any event, what I was saying was this: I said if this were a small community the method of proof, as indicated by the cases, would be to call the persons directly involved. Your Honor has thus far conditionally ruled that your Honor would not allow the calling of those persons who would give the direct evidence on their status.

The Court: There is no condition about it. I have said positively that I won't let you do it.

Mr. Isserman: Then your Honor has in effect ruled that this would not be allowed.

The Court: I have ruled that this idea of calling every member of the population or every member

from Mr. Marcantonio's district or every voter or every inhabitant from any other district I will not permit, and I won't. And if it can be stated any clearer than that so that you may have your exception in the most positive and unequivocal manner, I can try to restate it but I think that is pretty clear.

Mr. Isserman: Now I said, if it were a small community that would be the way of proceeding. Now, when the Court rules out the direct evidence

—Ch. Tr. 2623—

then there necessarily must be a falling back upon secondary evidence; and secondary evidence invariably, by its nature, is evidence which has not the sharp, direct, probative value of direct evidence.

The Court: Now, Mr. Isserman—

Mr. Isserman: Now, the reason why—

The Court: Let me say something to you. In every judicial proceeding that I am familiar with, and I have had a pretty large experience at the bar, when the Court indicated that it didn't want any more argument on a point the lawyer quietly desisted. If he chose to except he noted his exception and went on to something else. Here, perhaps in an endeavor to wear me out, which it is gradually doing, you keep that up, and you make the argument or arguments just as you are doing now. And I say, as I have said before, that that in my judgment is not the proper conduct of an attorney. It is extremely wearing on the Court in a trial of this kind. I suppose it will wind up by bringing me down. I hope it won't. I may have the strength to go on, and I hope I shall. But I tell you—stop it.

Mr. Isserman: I would like to take exception to your Honor's remark as an improper characterization of my conduct.

—Ch. Tr. 2624—

I would like to state my—complete my objection for the record if I may.

The Court: You insist on going ahead again, and all I can do, as I do not intend to make a rumpus about it, is to advise you again—please desist; and then, if you insist upon going on, why, you must take the consequences, whatever they may be.

Mr. Isserman: May I state my objection for the record?

The Court: You may not.

Mr. McCabe: May I respectfully suggest, your Honor—

The Court: Now it is your turn to go after me, is it?

Mr. McCabe: No, not at all, not at all. I am making a suggestion which I think is normal when the credibility or value of a witness's testimony is under scrutiny; that the Congressman's ability to testify as to the qualification for service on a jury of the hundred thousand persons in his district might well be subjected to the ordinary test of cross-examination rather than to arbitrary exclusion by your Honor. I should not have used "arbitrary," and I withdraw that. But exclusion without any test. I don't think your Honor should assume at the beginning that the Congressman is unable to

—Ch. Tr. 2625—

testify.

The Court: You know, Mr. McCabe, what we are talking about now is my excluding the question to the Congressman of whether he can tell us about the intelligence of these 297,000 people and their literacy. That is what you are arguing about.

Mr. McCabe: Wasn't that the point to which I addressed myself?

The Court: I say it does not need any argument. Now, some day somebody will read this record and they will see just how many times this same sort of thing has been going on, and somebody may be brought to judgment.

I am not going to attempt to use up my physical resources in telling you any more. So if you want to go ahead, after what I have said, I am not going to try to stop you. It is just too wearing.

Mr. Sacher: I have an observation to make, your Honor. I think it would be a misunderstanding of our purpose if the Court were to believe that we have any aim at any time to harass the Court or to do anything of impropriety. I think that while your Honor's health is of grave concern or great concern to yourself and those who are near to you, we lawyers have the responsibility of defending the freedom and liberty of twelve men and also to defend the right of their political party to exist, to

—Ch. Tr. 2626—

say nothing of their wives and children.

The Court: You may wear me down.

Mr. Sacher: No, it isn't a question of wearing you down.

The Court: But my own personal opinion is that you won't.

Mr. Sacher: Well, I don't intend to. I don't want to. And that is not a purpose that I have set myself.

The Court: The best way to avoid it is to sit down and let the matter rest with my ruling excluding the two questions.

Mr. Sacher: I just want to make this observation, if I may. Your Honor did not limit himself to a statement of ruling. Your Honor made an observation concerning the state of our proof, and you said because of the nature of Manhattan Island or of the Southern District it was impossible to do things in a certain way. And I respectfully submit that that evidences a misconception on the Court's part of the tendency of our proof. If New York is all that your Honor says it is, how come that this jury clerk always manages to find his jurors from the 17th Congressional District? And how come that this jury clerk never hits any one of the hundred thousand people from—

—Ch. Tr. 2627—

The Court: Now Mr. Sacher, just lower your voice a little bit.

Mr. Sacher: All right, your Honor, I am sorry if I am carried away.

The Court: That is the same sort of thing that you have repeated again, again and again, and that is the sort of repetition that I do not desire.

Mr. Crockett: If the Court please—

The Court: Ah, Mr. Crockett.

Mr. Crockett: I should like to address the Court.

The Court: Well, we are going to have every one of you take a crack at me, eh? Well, go ahead.

Mr. Sacher: I wish to note an exception.

Mr. Isserman: I take an exception to your Honor's remark.

The Court: Yes. Go ahead, go ahead. Take a couple of exceptions.

Mr. Crockett: As a matter of fact, I have been unusually quiet, because this morning when your Honor was inviting comment—

The Court: Yes, but now you see a chance to follow up a little harassment, and you can't resist it.

Mr. Crockett: No, it isn't that.

The Court: Yes, go ahead.

—Ch. Tr. 2628—

Mr. Crockett: I sort of feel badly over the fact that this morning when you invited comment you did not ask me to speak on the matter, and I thought that maybe at this time you would care to hear what I did think about it.

Well, I have only two observations to make. A day or two ago the Court pointed out that at the conclusion of the taking of testimony in this case no time would be allowed for the submission of briefs, and that if counsel had any authorities to which the Court's attention should be directed that should be done in the course of the presentation of testimony.

The Court: No; what I said was that when the evidence was closed there would be no additional time for briefs but that I would be glad to receive

whatever briefs might be submitted during the continuance of the proceeding. And I mentioned specifically the fact that you might busy yourselves over this week end in getting something up for me. I did not ask for more talk during the taking of the testimony.

Mr. Crockett: Well, I do not regard what I am saying as just more talk, and I am certain your Honor did not intend to characterize it as that.

The Court: When you read the record you will see that you said was that I had indicated that I

—Ch. Tr. 2629—

wanted some enlightenment orally during the proceeding, and, I consider that not what I said at all, and as I like to have the record straight I made the statement I just made.

Now, go ahead, without bringing in those other matters. If you have something to say about these two questions that I ruled out that have been addressed to Mr. Marcantonio, go ahead and do it.

Mr. Crockett: I seem to recall distinctly the Court's statement that "If you gentlemen have any authorities to which you are to direct my attention I suggest that you do it as we go along."

The Court: That is right. Not orally. Hand me up a memorandum with them. I can read.

Mr. Crockett: I appreciate that fact, your Honor, and I am very much aware of it.

However, what I want to point out is that the method of proof we have been pursuing here by calling an outstanding member of the community to testify concerning the approximate number of

people in the district, about their knowledge, the basis of qualification, for jury service, is precisely the type of proof that has been offered and accepted in the overwhelming majority of cases coming up from the South, where it was necessary to prove

—Ch. Tr. 2630—

negro exclusion.

In those cases counsel did not rely on the clerk and the court officials perhaps because he was aware of the characterization which Mr. Gladstein mentioned yesterday as having been made by your Honor. What normally happens is that they call in some outstanding person in the community to establish the fact that there are qualified Negroes in the country who had not served as members of the jury over a long period of years, and that proof has always been received, has always been considered by the Supreme Court.

In effect what we are doing here is calling the most outstanding person in the 18th Congressional District, who already has demonstrated his knowledge of the area and of the people in the area, and asking him to do precisely what has already been approved by the courts in similar cases challenging grand jurors in the South, which cases eventually went to the Supreme Court.

That is the first observation I wanted to make.

The second one I wanted to make is this, and that is that it seems to me that this proceeding is in the nature—

The Court: Have you some case, Mr. Crockett, to cite to me where the Supreme Court held that

it was all right to ask a politician or Congressman

—Ch. Tr. 2631—

a blanket question about the literacy of all the people in his district or the intelligence of all the people in his district? Have you such a case?

Mr. Crockett: I want first of all to object to the Court's characterization of Congressman Marcantonio as a politician.

The Court: Yes, and you will just answer as you did the last one.

Mr. Crockett: I wish also to object to your statement with reference to my own conduct. I think the record will show that on each occasion I have given the Court an answer when I was asked to give an answer.

The Court: I think not.

Mr. Crockett: Now in this case your Honor is requesting that I refer you to some cases.

The Court: That is right.

Mr. Crockett: That is what I want to do.

The Court: Go ahead and do it.

Mr. Crockett: The case of Patton vs. Mississippi is one.

The Court: Wait a minute. Penn vs. Mississippi?

Mr. Crockett: Patton vs. Mississippi.

The Court: What is the citation? And for once give me the official citation.

Mr. Crockett: If your Honor prefers, I will pre-

—Ch. Tr. 2632—

pare a list of these cases and give it to you in the morning.

The Court: No. I will check this one right now and we will see if there is anything in there on the subject.

Mr. Crockett: Patton vs. Mississippi is 332 U. S. 463.

The Court: Now, if you will just sit down and let me get a look at this book. (Reading.)

Well, I find absolutely nothing in that opinion which even remotely touches the subject under discussion.

So we will proceed now without any further argument, please.

Mr. Crockett: I should like merely to request permission to give the Court a memorandum, your Honor.

The Court: Well, if you are going on, Mr. Crockett, you are doing it in defiance of my request of you.

Mr. Crockett: I am not arguing; I am merely trying to get permission to submit a memorandum—

The Court: You are talking. Go on, keep it up.

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—Ch. Tr. 2683—

New York, February 7, 1949

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The Court: Well, you know, it is often that way when a lawyer asks a question and the Judge sustains an objection to it, that he would like to go

on arguing. But I do not desire further argument. I understand your contentions. Goodness knows, you have told me about them often enough.

Mr. Sacher: But your Honor has said that it will rest in your hands to say what weight, if any, is to be given to this report. And I am addressing questions designed to elicit answers which will give the highest and the greatest weight to this report, and that is what I am being prevented from doing. I cannot—

The Court: You are being prevented, that is right.

Mr. Sacher: Yes. That is what I am saying.

The Court: And that is what the Court is here for, to rule on questions.

Mr. Sacher: Does your Honor mean that if this man testifies—

The Court: I do not desire further argument, Mr. Sacher.

Mr. Sacher: I want to ask you a question.

—Ch. Tr. 2684—

The Court: And you were just about to raise your voice again. It gets so tiresome. Please don't do it.

Mr. Sacher: I will refrain. But I would like to ask you, your Honor, does not Honor hold that a conversation between this witness and the Chief Judge of the Southern District of New York concerning the characteristics of the jury system in this district would constitute hearsay, when this man is directed by his chief, who is the chief or director of an agency created by the Supreme Court of the United States, to ascertain this information from the only people whose duty it is to divulge the infor-

mation, namely, the senior judge and the various clerks—does your Honor say that statements made in the course of the performance of their duties constitutes mere hearsay?

—Ch. Tr. 2685—

The Court: I am not disposed to get into a controversy with you.

Mr. Sacher: No. I thought your Honor might help me and answer as to whether you regard that as hearsay. I can't regard any statement Judge Knox made whether here or before Congressional committees as constituting hearsay. I say that they express the practice, and however—

The Court: I suppose there is no way for me to stop you from going on talking, and, as I said before, I am not inclined to waste my strength in the effort.

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—Ch. Tr. 2694—

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Mr. Sacher: Now, I want to prove it to you, and the first step in proving it to you—

The Court: Don't prove it to me in the way you are now endeavoring to do—

Mr. Sacher: What you are doing—

The Court: —constant repetition and coming back to the same thing, Mr. Sacher, does not help one iota. You may be right; I may be wrong; but saying it over again, repeating and repeating, you asking the question, I sustaining the objection, will do more

than had been done when the first objection and the first ruling was made.

—Ch. Tr. 2695—

Mr. Sacher: You see, I ask for instance—

The Court: Well, you always use anything that is said as the jumping off point for some more argument, and I tell you on this point I do not desire argument.

Mr. Sacher: Well, I don't want to argue, but I would like to ask what is the occasion for appointing a man with a practical knowledge of the social, racial and economic groups of New York and their geographical distribution unless he is put there for the purpose of using that knowledge to exclude certain economic, social, racial and geographic groups?

The Court: You see, whenever I try to stop you your raise your voice—

Mr. Sacher: I am sorry—

The Court: —and you repeat again. Now you have said that same thing many times. I suppose you do it for some purpose other than is connected with this judicial proceeding. But as I said before, I am not disposed to go ahead and try and hold you down—

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—Ch. Tr. 2741—

Q. Isn't it true that you learned in 1942 directly from

—Ch. Tr. 2742—

the attaches of this court, particularly the jury clerk and the ~~commissioner, the jury commissioner~~, that in selecting citizens of this district for potential jury service the clerk's office and the jury commissioner were taking names directly from a private organization?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Isn't it true—

Mr. McGohey: I desire, your Honor, to press the objection against the form of the question because counsel is now attempting to testify.

The Court: Well, I think, Mr. Gladstein, it is sufficiently obvious that the attitude of the Court is and the rulings are against this line of questioning. So I think you had better turn to something else.

Q. Did you ever learn directly from attaches of this court, sir, whether or not an association called the Federal Grand Jurors Association of this district had been and was supplying to the clerk's office lists of names of people to be qualified as and selected for jury service?

Mr. McGohey: Objection.

The Court: Mr. Gladstein, that is the very type of question that I just told you not to ask.

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—Ch. Tr. 2839—

New York, February 8, 1949

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The Court: I may state that one of the reasons that you may assume exists as to all excluded evidence from now on is that I feel that there has been a wilful, deliberate and concerted effort here to de-

lay the proceedings. And I am going to see what I can do to prevent any further delay. I have been working up to that now. At first I couldn't think it possible, and then it began to dawn on me that maybe that is what was going on. And I mentioned it two or three times but it did not seem to have any effect. And finally it has come to my mind that such is the fact, and I so find.

—Ch. Tr. 2840—

And you may, among other things, as reasons for mysustajning the objections from this time on, add tha one.

Mr. Gladstein: I want to take an exception to the Court's remark and the implication of the remarks of the Court and to state in substantiation of the purpose of the offer that we are here seeking to introduce evidence, the facts concerning which will not be disputed, the tabulations on which are accurate and are being vouchsafed for by the witness and agreed to by everybody concerned—to show the nature of the system, how it operates, how it was intended to operate to select jurors here. And each of these pieces of evidence is directly, immediately connected with the issues that we present in our challenge. We say in the challenge, your Honor—

The Court: Well—

Mr. Gladstein: May I complete the statement?

The Court: Well, it has seemed to me that the record plainly demonstrates that if I permit you to do so you and your colleagues will go on and on and on, and we will still be trying this challenge

when the snow flies again next winter, and I am not going to permit that. I think such evidence as you put in indicates very plainly what you desire, and it just keeps going on and on and on, and I gather

—Ch. Tr. 2841—

that all this photostating that you are having done may well be a foundation for a prolonged system of week after week of going into every paper that was up there in the jury commissioner's office. And if you have any notion that you are going to do that, you might just as well know now that you will not.

Mr. Gladstein: Can I finish my statement?

The Court: Yes.

Mr. Gladstein: I want to say with respect to the two types of exhibits that have been offered this morning, first that dealing with the political character of the areas from which jurors have been taken in contrast with the areas from which jurors have been excluded, or on the way the voting population have been excluded systematically over a period of years from the juries of this court, that that evidence directly bears upon the charge that we make in the challenge, spelled out in so many words, that the system here has been operated in a way that discriminates according to a political basis.

With respect to the exhibit that has just now apparently occasioned the Court's remarks, I desire to point out—

The Court: What occasioned my remarks was your asking me what the reasons for my rulings were,

—Ch. Tr. 2842—

and I thought, as there were many reasons for the

last few rulings, I might just as well let you know that this dragging on, slowing down process that I have observed and have now found to be a deliberate and concerted effort, is one of the reasons for my rulings, and will be from now on.

Mr. Gladstein: I take exception to the Court's remarks.

The Court: That is all right. I can't expect you to agree that you have been doing that.

Mr. Gladstein: Not only should your Honor not expect me to agree, but I deny that it is true, and I deny that anything in the record or outside the record warrants that statement.

Mr. Isserman: If the Court please, on behalf of myself and the counsel not here at the counsel table this morning, I object to your Honor's remarks and to your Honor's finding to the effect that the defense efforts to introduce evidence here has been a wilful and concerted effort to delay this proceeding.

I object also to your Honor's remark to the effect that if permitted to put in the evidence which is relevant and material to the issues here, and which we deem so, that we will be engaged in an endless proceeding which your Honor suggests might take

—Ch. Tr. 2843—

the balance of the year or more.

I object also to your Honor's remark to the effect that by the token that we are photostating certain papers in the clerk's office, that these papers will either be used for purposes of endless delay or that it means that every paper in the clerk's office, as your Honor indicates, will be offered in evidence.

At the same time we have to assert, and I do assert on behalf of the other counsel, our right and our duty to present that evidence on this challenge which we deem necessary and relevant, and that the evidence which is being offered is that type of evidence. We have been limited in many ways by the Court's rulings. We are faced with a difficult problem because of the size of the area with which we have to deal, and we are doing our best to present the facts as they appear from the result of our investigations.

There has been no intention, there has been no effort, there has been no action taken by myself as one of the counsel or by the others, to my knowledge, to create any situation in which there is wilful or deliberate or concerted effort to delay. What there has been, has been a deliberate and persistent effort and a concerted effort to place on this record those facts which bear on the challenge we have

—Ch. Tr. 2844—

made; and in a presentation of those facts we will have to continue our efforts, notwithstanding the Court's evident disapproval and notwithstanding the Court's ruling in that respect as just made, or the Court's finding as made.

And lastly we want to say that the Court's ruling in that respect and the Court's finding of a wilful or concerted effort of delay as a basis for the exclusion of evidence denies us due process of law in the presentation of the facts concerning this challenge.

The Court: It was a conclusion I came to most reluctantly and with regret.

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—Ch. Tr. 2973—

New York, February 9, 1949

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The Court: Well, probably it seems to you unimportant to determine whether the exhibit is accurate or not. Mr. McGohey is quite within his right in determining that matter, and I take it that is the purpose of these questions. You know, yesterday we found one of the charts was not accurate.

Mr. McGohey: Now, if your Honor please, may I have the last question to the witness read?

The Court: You may.

(Last question read.)

A. I would expect there to be none, but if you want me to look at each page I will be glad to and see.

Mr. Sacher: May we write any delay that flows from this to Mr. McGohey, please?

The Court: Well, Mr. Sacher, I consider that an impertinent comment and hope you will not repeat it.

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—Ch. Tr. 2993—

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The Court: Perhaps we can shorten this thing up and help you out a little bit about it. At the moment I am a little bit inclined to let him go ahead as to these names that he says are repeated, subject

to connection later. Now, if you have two or three other things of the same character, maybe we can dispose of them. If you would rather not tell me what they are, which is the course you gentlemen have pursued pretty persistently in this trial, why, I shall simply let the matter drop.

Now, what my inquiry is, what are the other things that you will attempt to bring out from Mr. Wilkerson besides the repetition of names?

Mr. Gladstein: Now, your Honor, I am not a small child. I am perfectly willing to state to the Court very candidly, as I always am, the character of the proof at any stage that I have to give.

The Court: Perhaps you will do it then.

Mr. Gladstein: I said yesterday that I had hoped, as a matter of fact, to complete Mr. Wilkerson's testimony before the day was over. But because of antics similar to the ones we have seen this morning on the part of the United States Attorney—

Mr. McGohey: I move to strike that out, your

—Ch. Tr. 2994—

Honor.

The Court: Strike it out.

Mr. Gladstein: (Continuing) —who says he can—

The Court: I don't know what on earth you can mean by that word "antics." There has been nothing here that could remotely be properly characterized in such a way.

Mr. Gladstein: I suppose that is a matter of judgment. And I was using the remark—

The Court: I think so. And, of course, I am the one who is supposed to be exercising the judgment.

Mr. Gladstein: Nonetheless, my point is this: that unless this question is withdrawn by Mr. McGohey with respect to whether or not a stenographer simply copies the name or the address in the office of the clerk from a jury panel, then obviously we are going to have to make that kind of comparison.

The Court: Now you remember what we are talking about. I asked you and I now ask you again, in addition to this matter of repetition of names what are the other matters that you expect to bring out from Mr. Wilkerson this morning?

Mr. Gladstein: I have brief testimony to bring out with respect to the 22nd Congressional district.

—Ch. Tr. 2995—

I have a few questions to ask him concerning testimony he has already given but which I think is not sufficiently precise and ought to be covered. And then I have brief testimony from him with respect to those factors that we once started to talk about that ought to be taken into account to determine the extent to which, if any, there is impact upon the occupational classifications that we have had testimony about, by reason of such factors as alienage, illiteracy, and taking into account the exclusion of those over 14 years old but under 21 who are gainfully employed.

The Court: All right. With that statement I will permit you to interrogate the witness in a general way as to what he did about this repetition of names, subject to connection.

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—Ch. Tr. 3033—

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By Mr. Gladstein:

Q. Now, Mr. Wilkerson, did you give attention to the impact of illiteracy? I believe you have testified to some extent on that subject and you made some charts, is that right? A. Yes, that is right.

Mr. McGohey: Now, if your Honor please, I make the same objection to this line of questioning. I haven't quite yet got the page in the record where we went over this, but my recollection is that we did.

The Court: I think I can find it in my notes in a moment, so if you will just pause for a brief interval, Mr. Gladstein, while I can see what I can find.

Mr. McGohey: I think your Honor will recall we had some exhibits put in consisting of the forms of examination that the State Board of Regents requires voters to take.

The Court: Yes.

Mr. Gladstein: That had to do with politics.

The Court: Here, I think I have it.

Mr. McGohey: Mr. Clerk, can you tell what date Exhibit 106 went in?

The Clerk: February 7th.

The Court: Yes. In the afternoon of February 7

—Ch. Tr. 3034—

this subject was covered. For instance, I have in here, estimated illiteracy in 1940 by race, Exhibit 106, native white, 1.1; foreign born white, 12.6; Negro, 3.9; others, 24.3; and a great deal of other

data on the subject. Now what is the use of going over it all over again?

Mr. Gladstein: I seem to recall the question was raised, and the witness was asked to have precise reference to sources, and there were some questions raised concerning a table that was marked for identification, and if I recall the colloquy we agreed to return to that subject later and supply the source reference. That is my recollection.

The Court: Then go ahead and show us the source reference and then be done with it. That is a perfectly proper thing to do.

Q. Did you prepare a memorandum on the question of the impact of illiteracy on your—

The Court: You know—

Mr. Gladstein: I am about to bring out—

The Court: You know, Mr. Gladstein, it is wonderful, it really is. You hear me; you appear to acquiesce; and then you go right ahead and do just the opposite.

* * * —— *

—Ch. Tr. 3105—

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Q. And will you tell us how that proprietor of a tailor shop is classified on that page 393? A. With the 360 symbol.

Mr. Sacher: I object to it unless it appears—

The Court: Please let him answer.

Wilkerson—Cross
Colloquy

Mr. Sacher: What are you worrying about, Judge? Do you think this case hinges on the little tailor on Amsterdam Avenue?

The Court: No.

Mr. Sacher: Is that the basis—

The Court: I am quite accustomed to instances where counsel who called a witness—

Mr. Sacher: May I ask for—

—Ch. Tr. 3106—

The Court: —constantly adopt stalling tactics and things of that kind, and I don't intend to have that here.

Mr. Sacher: May I then ask for permission to make the observation after he answers that I was going to make before?

The Court: Well, you have already served that purpose.

Mr. Sacher: What is the difference? I couldn't—

Mr. McGohey: If your Honor please, may I ask that the witness be directed to answer the question I have just asked?

Mr. Sacher: I object again on the ground that it doesn't indicate whether the tailor Mr. McGohey is speaking about is an employer of labor or not. And Mr. McGohey can't tell me or anybody else that anyone that employs ten employes in a tailor shop isn't a proprietor, owner and manager.

The Court: You have done just precisely what I told you not to do, and you have done that so many times that I will merely have it indicated on the record here that I am observing and noting. I ask

all of counsel to desist from comments in the guise of objections to questions which in effect suggest the answers to the witness under cross-examination.

* * * * * *

New York, February 10, 1949

—Ch. Tr. 3162—

Q. Very well. Now, you learned from those two paragraphs which you have just read—that is, when you read

—Ch. Tr. 3163—

this report originally you learned from those two paragraphs that you have just read that jurors whose names appeared on a panel might not necessarily serve as jurors for the period for which that panel was called, did you not? A. No. Indeed, I do not even remember reading those paragraphs because my reading of the Tolman Report some time ago was a cursory reading which had no impact or no use for the purposes that I was seeking.

Q. And you don't remember now? A. And I don't remember reacting to that at all.

Q. Well, you know now from reading it that jurors whose names appear on a panel do not necessarily serve as jurors during the period for which that panel is called, do you not?

Mr. Sacher: Just a moment. I object to the question on the ground that this witness, who did not write the report, is being asked questions in regard to the contents of the report, while when I examined the author of the report your Honor sustained objections to any inquiry concerning any part of

the exhibit. On the same grounds, I object to this question.

The Court: Mr. Sacher, let us suppose that the witness, as he states, read the report and saw from that report that by the common experience in the jury commissioner's office, jurors might be called

—Ch. Tr. 3164—

and be excused, and when they were excused they were put on for the next month. Don't you think that if he did that, if he read that, that it would be a curious circumstances that he should produce a list which purported to indicate that certain jurors were brought on again and again, when an indication of an excuse and coming back the next month would sort of reduce the effect of any such list? Perhaps if he knew those facts but got up the list, nevertheless, it might be a circumstance affecting his veracity, might it not?

Mr. Sacher: A short answer would be no.

The Court: Very well. Then I will overrule the objection.

Mr. Crockett: If the Court please, I would like to state an objection: My objection is that the witness is being cross-examined about matters that were not brought out in his direct examination; unless the United States Attorney desires to make the witness his witness, then I submit that this is improper cross-examination. I wish also to object to the Court's statement to the effect that the witness got up a list. I think the testimony indicates from the witness's own words that he was provided with lists by defense counsel.

Wilkerson—Cross
Colloquy

The Court: I meant Exhibit 37. That is the one I am talking about. That is the list, that is the ex-

—Ch. Tr. 3165—

hibit which he attested to the accuracy of, and that is what was being inquired into. I will overrule it. But I see we are getting back to the old system, so each one of you may proceed seriatim et singulatim.

Mr. Crockett: I object to the Court's characterization of my objection as getting back to "the old system."

The Court: Mr. Crockett, do you think that any reasonable person could suppose that there was anything improper in questioning this witness on the subject that he is being questioned about? Do you seriously think there is anything in the point?

Mr. Crockett: I do. I would not press the objection if I was not serious about it.

The Court: Well, the objection, as you stated it, seemed to me to be almost frivolous.

Mr. Crockett: But, your Honor, I sat throughout this entire proceeding and at no time has this witness been questioned about the Tolman letter.

The Court: No.

Mr. Crockett: The United States Attorney asked him had he read the Tolman letter, and his testimony is to the effect that he had given it a cursory reading; and now he proceeds to cross-examine him on the Tolman letter, which was not brought out on his direct examination.

—Ch. Tr. 3166—

Mr. Gladstein: If your Honor please, I desire to record an objection to the question asked by the

United States Attorney and to this line of inquiry upon the ground that it is incompetent, irrelevant, and immaterial, for these reasons: the testimony of this witness and the exhibits that were received in evidence in support of that testimony go to the proposition of establishing that in the first instance there is discrimination in the selection of jurors. It is wholly immaterial that thereafter, after the selections are made and the discrimination has been practiced and brought about, one or another or several of the jurors so called may for personal reasons seek to be excused from one particular panel. And the fact that upon being so excused those jurors are later utilized on some later panel, be it the following month or the following six months period or the following year, is by no means any basis for contending that there could be any weakness in the testimony given by this witness.

I therefore submit that the line of inquiry is immaterial.

Mr. Isserman: If the Court please, I rise singulatim and not seriatim—

Mr. McGohey: Now before Mr. Isserman proceeds—

The Court: I think it is both seriatim and singu-

—Ch. Tr. 3167—

latim.

Mr. Isserman: And rise for the sole purpose of objecting to your Honor's characterization of the conduct of counsel.

The Court: Well, the objection is duly noted.

Have you no argument to make on the point at issue?

Mr. Isserman: As a matter of fact, your Honor, I do have, and my objection would be on another ground, but your Honor has inhibited me, and I won't make it, and that is the precise reason for my objection to your Honor's comment.

The Court: If you are inhibited, Mr. Isserman—

Mr. Isserman: I am.

The Court: —it is a condition which has suddenly crept up on you.

* * * * *

—Ch. Tr. 3172—

Mr. McGohey: Now, if your Honor please, I ask the Court to take judicial notice of this card, which is an official record of the court and is a card similar to Exhibit 8 which appears in the Tolman Report.

—Ch. Tr. 3173—

The Court: I do take judicial notice of it.

Mr. Isserman: I have an objection on two grounds: First, the card has not been identified; and secondly the use of this card is not proper cross-examination. The witness has not testified about cards; he has testified about an exhibit; he has answered questions on cross on the exhibit. If the Government cares to go further on the issue of this new matter, that is something for the Government's direct case, just as the matter which we sought to elicit from Mr. Wilkerson at this point is matter for redirect. This is going very far afield in cross-examination, and an effort by the Government to use cross-examination to put in its own case.

Wilkerson—Cross
Colloquy

The Court: Mr. Isserman, are you cognizant of the fact that I made a finding the other day that you and your colleagues had participated in a wilful, deliberate and concerted effort to delay the proceedings in this case?

Mr. Isserman: I am, and I made the objection to your Honor's finding, your Honor will recall.

The Court: Yes. Now you are doing it again.

Mr. Isserman: I object to your Honor's characterization of my objection.

The Court: I just want you to know that I find

—Ch. Tr. 3174—

that you are doing it again.

Mr. Isserman: I take objection to your Honor's comment.

The Court: And if these repeated objections on such grounds as have been stated here are continued I shall be literally forced to rule that on cross-examination objections shall be restricted merely to saying "I object." Now, I don't want to do that. But these objections we have been having here this morning are absolutely trifling. The questions are of such a character that there is no occasion to have any objections at all, and I wish you lawyers would desist from doing that.

Now, I am asked to take judicial notice of this card, which I do. If something is going to be done later on as to the use of it I can see now what it will probably be, and I would suppose it was entirely relevant and proper; but that is all I have been asked to do that you have been making all

these objections to, and I notice the smirking of Mr. Crockett and Mr. Sacher which, as I have observed before, a number of things of that kind—

Mr. Sacher: That is unrelated, your Honor, to anything that your Honor has said or done. I was talking to my client. I can't control my facial ex-

—Ch. Tr. 3175—

pressions when I hear a humorous remark from a client.

The Court: I have observed, Mr. Sacher,—

Mr. Sacher: And on the record, I can't control the facial expressions arising in the course of a conversation with one of my clients. Now, I can't live in a straitjacket here and control my face so that it will be pleasing to your Honor.

The Court: If you ever get so that you can control your face I am afraid you will be in a bad way. But however that may be—

Mr. Sacher: I don't think that is a nice remark to make either, even if it is only to a lawyer.

The Court: You talk and talk and talk. No amount of warning will suffice. No amount of finding that you do it with the deliberate effort for delay has any effect upon you. You keep on talking probably because you are so used to doing it and not being reprimanded for it. But I think we will reach a time in these proceedings when you will cease.

Now, I go on with what I started to say. The finding I made the other day was based not only upon occurrences that appear in the minutes but upon what I have observed in the conduct of counsel before me here, sneering, snickering, obvious indications of

one to another "Get up, it is your turn now, go at
—Ch. Tr. 3176—
it next, keep this thing going," and so on. So that I think perhaps before very long you gentlemen will appreciate that you should not do these things.

Now I have taken judicial notice of the paper, and we will proceed.

Mr. Crockett: If your Honor please, I was not in court at the time your Honor made this finding of dilatory tactics on my part. I desire to object for the record at this time. I desire first to deny your Honor's characterization of my conduct as smirking and sneering—

The Court: Well, that is what it was.

Mr. Crockett: (Continuing) And I feel restrained by the code of ethics and refrain from making my own characterizations of some of your Honor's conduct into the record at this time.

The Court: Well, if you have been restrained in characterizing my conduct it is a queer kind of restraint. You and your colleagues have called me about everything that a Judge can be called, and have charged me with corruption and bias and prejudice and many other things, and if you consider that you have been restrained in doing that, not once, not twice, not a dozen times—then I am afraid the record will not bear you out.

Mr. Isserman: If the Court please, I rise to ob-
—Ch. Tr. 3177—
ject to your Honor's characterization of my conduct at any time in this proceeding as either sneering or smirking. I also object to your Honor's character-

ization of any conduct on my part as suggesting "go at him next, keep this thing going." I have never done that. I have never engaged in any action which indicated that that was my intention. I have never had that intention. I have made objections, and when I make them I make them because I believe I should make them for my client.

As far as any charge or characterization of your Honor is concerned, if I have done it it has been done solely in a manner which the law provides in connection with protecting the rights of my client.

The Court: That is what you say.

Mr. Sacher: If you please, I wish to deny on the record so far as I am concerned each and every of the statements made by your Honor concerning me, if the remarks were designed or intended to cover my conduct—

The Court: They were.

Mr. Sacher: (Continuing) If they were, then I wish to interpose a denial very briefly to those charges, and I wish to state it to be my belief that the sole purpose of the statement is to prejudice us in the eyes of the people and of any higher courts who may come to review this record.

—Ch. Tr. 3178—

Mr. Gladstein: Your Honor, I wish to object to your Honor's characterization and statements in so far as they apply to me, and I deny the validity of those statements or that any basis for such statements exists.

Colloquy

The Court: Now I hope there will be a little less profuseness in the objections during cross-examination.

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—Ch. Tr. 3256—

New York, February 11, 1949

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The Court: You know, Mr. Crockett, I have tried in numerous ways here to make it clear that in view of the relatively same position of different defendants here that whatever ruling is made that may be adverse to one, the others may all get the benefit of it. And the same is true of any law points that are raised. I have thought from the beginning that that was only fair, and I made that statement, too, so that we might not have the hue of each lawyer in reference to each point because it seems so unnecessary. I do not want to say that it is in every instance not the right thing to do. For example, I felt with that question that came up late yesterday afternoon that it was one on which everybody might desire to ex-

—Ch. Tr. 3257—

press some views. But so many of the things have been utterly trivial.

And so I hope that what I have said and what I now repeat about rulings that may adversely affect anyone, all of the defendants have the benefit of it. It will not be necessary to say that you join in the views; it will be assumed that any adverse ruling is one which anyone of the defendants may take the benefit of before any Appellate Court; the excep-

tions will be deemed to have been taken by all, and the benefit of any legal argument made by one counsel will be deemed to inure to the advantage of each and every one of the defendants.

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—Ch. Tr. 3269—

Mr. McGohey: My purpose, so that here shall be no doubt about it, in asking the question in the form I did is twofold. First I desire by ascertaining the length of time that the witness has been a member of the Party to show a long association with the defendants in this case that would have some bearing on the question of his interest and bias in their behalf. Furthermore, if I am permitted to ascertain precisely the date which he joined, it may or may not transpire that at some other time the witness has testified falsely or answered falsely under oath with respect to that very same question.

Mr. Sacher: I move to strike the improper remark out, your Honor.

The Court: No, Mr. Sacher. Why should I strike

—Ch. Tr. 3270—

it?

Mr. Sacher: I think it is improper to make the remark, because the purpose of cross-examination here is not to lay the basis for another prosecution, assuming there even were any grounds for it, and I assert as strongly as I can there are absolutely none. But even if there were, this inquiry would be improper for that purpose. The purpose of cross-examination is to elicit the truth and not to lay a basis for persecution of a witness.

Mr. McGohey: If your Honor please, I move to strike that last remark.

The Court: I don't see—

Mr. Sacher: Let us see whether I get equal treatment with Mr. McGohey.

The Court: I do not see that there is much use in my striking things that are already said and on the record. I think I will just content myself with the ruling after I have heard the balance of your argument.

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—Ch. Tr. 3281—

Q. Were you ever a member of the National Committee of the Communist Party?

Mr. Sacher: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

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—Ch. Tr. 3287—

The Court: * * *

Now, I am going to allow the question. I don't want to hear any more argument.

Mr. Sacher: May I just have one moment, your Honor, and it is to say this: if the question were something which affected credibility which would permit your Honor to say whether the evidence or the testimony of the witness in its entirety should stand or be rejected, then I think that your Honor's position would be unassailable. But what you have

here is a quantum of evidence which indisputably consists of and rests on Government figures.

Now, in those circumstances it seems to me that an affirmative or negative answer as to whether the witness was or was not a member of the National Committee of the Communist Party gives your Honor no guidance as to what portion of his testimony has been adversely affected by that membership.

Does your Honor have a single notion as to what the seven per cent figure that the witness gave to you in regard to the deductions that must be made for those who are aliens, illiterates, between 14 and 21 and over 70, will be, if you know that he was a member of the National Committee? You won't know that. Consequently I—

—Ch. Tr. 3288—

The Court: Mr. Sacher, it will make a good deal of difference to me what the aggregate of all the factors brought out on cross-examination may add up to.

Mr. Sacher: That may be.

The Court: I do not say now, nor can any judge say how much one particular fact brought out on cross-examination is going to affect his judgment when he comes in the end to decide whether he believes the witness. Now, I am going to allow this question, and please don't argue any more.

Mr. Sacher: I won't, your Honor.

Mr. Gladstein: Our objection is noted, your Honor?

The Court: Yes. The objection is overruled.

Wilkerson—Cross
Colloquy

Mr. Isserman: If the Court please, I merely want to put on record my objection here of your Honor's characterization of counsel, of defense counsel yesterday as engaging in trivialities. I object to your Honor's remark to that effect.

The Court: Well, if that series of objections at the early part of the cross-examination of this witness did not relate to trivialities, the smallness, the minutiae that ordinarily come plainly within the Court's discretion on cross-examination, then I just

—Ch. Tr. 3289—

don't know any law at all. That is why I permitted so much discussion on this matter of whether the man is a member of the Communist Party, because I thought there was some substance to this question. The others I could see no substance in at all, and I intend, as far as I am able, to cut down that sort of triviality, and one of the reasons is that I have been so persuaded that you lawyers are just attempting to make a mockery of justice here, and I won't have it.

Mr. Isserman: If the Court please, I object to that remark.

The Court: Well, that is right. Every time you get up to do some more of it you will get some more right back.

Mr. Isserman: Your Honor, I am sorry that your Honor is taking this position, but I certainly will object every time your Honor makes a statement on this record which I believe goes against the interests of my clients and affects my right to defend my clients.

Wilkerson—Cross
Colloquy

The Court: You can keep objecting and adding your objection to the others, after I have so repeatedly said that the advantage of any adverse ruling will inure to every single defendant, you can keep getting up and keep saying that you join in the objection, and you do this and you do that, but the effect of it all is confirming my view that there

—Ch. Tr. 3290—

has been this deliberate effort here to make a mockery of justice and to, in effect and in the aggregate, sabotage the administration of justice, and I just won't have it. That is all there is to it.

Mr. Isserman: I am sorry, I object to your Honor's remark again. It is wholly uncalled for.

The Court: You may do all the objecting you want, but I am running this court and we are not going to have this interminable delay.

Mr. McGohey: May I—

Mr. Sacher: Excuse me a moment. I respectfully suggest, your Honor, that those recent remarks ought to be reconsidered. I really think—

The Court: They won't be reconsidered, and there is only one way that you are going to have things run smoothly and easily here, and that is that you gentlemen quietly and calmly do what I tell you to do.

Mr. Sacher: But I am afraid your Honor lost his calmness for once at this time—.

The Court: No. My patience it still working on. I make these statements in utter calm—

Mr. Sacher: It did not appear so to me.

The Court: —and they are in my judgment factually correct.

—Ch. Tr. 3291—

Mr. Gladstein: If your Honor please, I can't sit quietly while you include me in the statement that you just made that there was any intention on the part of any of the lawyers to make of the proceedings in this court a mockery of justice. I deny that there was any such intention, and moreover—

The Court: Well,—

Mr. Gladstein: May I finish—

The Court: —Mr. Gladstein, you know this is the fourth week of this trial. We have gotten in here now, in my judgment, a quantum of proof that could with diligence and with the intelligence and experience that you gentlemen have, been placed in the record in three or four days at the outside. I have said that I was thinking about doing something about it, and at the close of the session this morning I shall do something about it.

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—Ch. Tr. 3344—

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The Court: That may well be.

Now we are going to stop now, and we will have no session this afternoon.

I have indicated from time to time that I was going to try to think of some way of preventing this challenge from being an interminable procedure; and so I hereby direct that counsel for the defendants

have ready for me the first thing Monday morning a statement which shall show what they propose to

—Ch. Tr. 3345—

prove in the remainder of their case and how they propose to prove it, with considerable detail. I shall not require the names of witnesses. I shall require a perfectly plain, explicit and detailed statement of precisely what they propose to prove and how they propose to go about proving it.

When I get that statement on Monday morning we will continue with the testimony of Mr. Wilkerson, and I will examine the paper, pass on its sufficiency, and take such other steps as I deem advisable.

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—Ch. Tr. 3346—

New York, February 14, 1949
10.30 a. m.

The Court: Now, Mr. Sacher, have you got that statement ready for me?

Mr. Isserman: If the Court please, we have, * * *

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—Ch. Tr. 3349—

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(Statement submitted to the Court.)

The Court: I shall study that somewhat further later in the day.

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Wilkerson—Redirect
Colloquy

—Ch. Tr. 3379—

Q. Is it or not true that in those Congressional districts where the American Labor Party received a substantially higher vote, even as much as three times higher—

Mr. McGohey: I object to counsel testifying from the exhibit.

Mr. Gladstein: I have not finished.

The Court: Yes, please desist from that type of examination, Mr. Gladstein. All the figures are right on the paper there and I cannot fail to get the impression that when you continually repeat them the way you have done, some reason other than persuading the Court as to the evidence exists.

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—Ch. Tr. 3398—

Q. Now the defendant Hall, his trade is stated here as lumberjack and steel worker. To which of the four categories does a lumberjack properly belong?

Mr. McGohey: I object to that, your Honor. There is no proof in the record as to what his occupation is.

The Court: Sustained.

Mr. Gladstein: I did not ask that. No. 1, the challenge sets forth in the moving papers what the trade is of each of these men.

The Court: That is no evidence, is it?

Mr. Gladstein: And I am asking—one moment, your Honor. Speaking of evidence, the United States Attorney referred to one of the documents in the case when he questioned on this general subject, and

I am asking this witness to indicate which of the four major groupings a particular type of work belongs.

The Court: You may do that hypothetically. You may say "assuming."

Mr. Gladstein: All right.

May I have the question read?

(Record read.)

A. On the premise that he had no supervisory functions above that of foreman he would belong to category 4, our

—Ch. Tr. 3399—

manual worker category, either as a lumberjack or steel worker.

Q. The defendant Foster, concerning him the challenge states—

Mr. McGohey: I object to any statement as to what the challenge contains.

The Court: You see, Mr. Gladstein, it is like all these other things; I indicate to you what to do and you look at me blandly and seem to acquiesce and then you proceed to do just the opposite. Now I told you you might put questions to the witness in hypothetical form.

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—Ch. Tr. 3415—

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The Court: Now that the testimony of this witness is concluded I find this memorandum dated February 14, 1949, that was delivered to the Court this

morning in response to my order of last Friday, is wholly insufficient; and therefore in the exercise of my discretion as to the order of proof, and without precluding counsel for the defendants as to what they may later do, I direct that at the close of the luncheon recess the Government proceed with its proof.

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—Ch. Tr. 3417—

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Mr. Isseman: If the Court please, the direction or ruling of the Court made at recess time to the effect that the defendants be at this time precluded from proceeding with their case and that the Government be allowed to proceed with its case at the commencement of this afternoon's session, we had then no opportunity to object because the same, as your Honor will recall, was made at the time of adjournment.

I herewith on behalf of my clients object to the Court's ruling on the ground that the ruling inter-

—Ch. Tr. 3418—

feres with the rights of the defendants to a complete and full presentation of the evidence on their behalf. While the ruling states that it is merely a ruling on the offer—order of proof it is for that reason in the Court's discretion. The defendants contend that this is an abuse of the Court's discretion in respect to order of proof and amounts to a lack of due process of law as guaranteed to the defendants by the Fifth Amendment to the United States Constitution.

Colloquy

Furthermore counsel were not apprised in what respect the memorandum which the Court has marked as its own exhibit just referred to was, and I believe I am quoting, wholly insufficient—unquote—and for what purpose it was used and in what respect it was insufficient for that purpose. And no opportunity was given to the defendants to present to the Court the reasons why the memorandum was sufficient and why they should be allowed to continue in the presentation of their proof.

Mr. Sacher: May it please the Court, I should like for the clients I represent to state our objections to this remarkable ruling of your Honor's. I say "remarkable" because we have just examined our first witness, and we had indicated to the Court in a detailed statement which we submitted this morning what we were going to prove in regard to the official

—Ch. Tr. 3419—

misconduct of those in this court who engineered, planned and administered this diabolical jury system whose characteristics—

The Court: Now, let us not have any more of this propaganda, Mr. Sacher.

Mr. Sacher: Well, all right, if your Honor think it is, I shall refrain.

The Court: You made extravagant charges; you iterated them and reiterated them, and I am not going to have any more of it. Now we have had four weeks of the so. . of thing that I have had occasion to speak of. I have made a finding here which is in my judgment amply sustained by the record, and I am just not going to have any more of it.

Mr. Sacher: If your Honor please, there would have been no occasion for me to speak at all on this